

**FINAL REPORT: PROPOSED
AMENDMENT OF ADMINISTRATIVE RULES
GOVERNING PHYSICIAN LICENSURE AND
PRACTICE—TELEMEDICINE**

(La. Rev. Stat. § 49:968(D))

By The

LOUISIANA STATE
BOARD OF MEDICAL EXAMINERS

Submitted To The

COMMITTEE ON HEALTH AND WELFARE,
LOUISIANA SENATE,

COMMITTEE ON HEALTH AND WELFARE,
LOUISIANA HOUSE OF REPRESENTATIVES,

PRESIDENT OF THE SENATE

And

SPEAKER OF THE HOUSE OF REPRESENTATIVES

January 6, 2017

**FINAL REPORT: PROPOSED AMENDMENT OF
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This Report is respectfully submitted by the Louisiana State Board of Medical Examiners (the “Board”), within the Department of Health and Hospitals, pursuant to La. Rev. Stat. §49:968(D).

By Notice of Intent published in the October 20, 2016, edition of the *Louisiana Register*, Vol. 42, No. 10, pp. 1722-1724, the Board proposed to amend its administrative rules governing telemedicine, LAC Title 46:XLV, Subpart 2 (Licensure and Certification), Chapter 3 (Physicians), Subchapter H (Restricted Licensure, Permits), Section 408 (Telemedicine Permit Qualifications, Procedure, Issuance, Expiration and Renewal) and Subpart 3 (Practice), Chapter 75 (Telemedicine), Subchapter A (General Provisions), Sections 7503, 7505, 7507, 7509 and 7513. Concurrently with submission of the Notice of Intent to the *Register*, in accordance with La. Rev. Stat. §40:968, the Board submitted a Report to the Senate and House Committees on Health and Welfare, the President of the Senate and the Speaker of the House of Representatives.¹ The Board did not receive a request for public hearing; however, it did receive written comments from two (2) organizations. Neither of these commenters voiced any concern or suggested any substantive change and both expressed support for the proposed changes.

This Report, submitted by the Board pursuant to and as prescribed by La. Rev. Stat. §49:968(D), sets forth a summary of the comments received by the Board on the subject administrative rule amendments and a statement of the Board's response to each comment. A copy of the Notice of Intent published in the October 2016 edition of the *Register*, accompanies this Report as Appendix A, which the Board intends to adopt as final amendments and to formally promulgate by and upon publication in the February 20, 2017 edition of the *Register*.

I. Background—By Notice of Intent published in the October 20, 2016 edition of the *Louisiana Register*, Board proposed to amend its administrative rules governing telemedicine. The proposed amendments were necessary to conform the Board's rules to Acts 630 and 252 of the 2016 Regular Session of the Louisiana Legislature, amending the Louisiana Medical Practice

¹*Electronic Mail*, La. State Bd. Med. Exam., RE: Report Relative to Proposed Amendment of Administrative Rules Governing Licensure and Practice — Telemedicine (Oct. 10, 2016).

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Act, La. Rev. Stat. §37:1271 and 37:1271.1 and other laws governing the use of telemedicine in this state.

II. Summary of Proposed Rules—The proposed changes appear at LAC, 46:XLV, Subpart 2, §408 and Subpart 3, §§7503, 7505, 7507, 7509 and 7513. Among other items, the proposed amendments: (i) remove the requirement that a physician practicing medicine by telemedicine maintain a physical practice location in this state or have an arrangement with physician who does (§408.A, §408.D.3; §7503.A, §7507.A.1.-2); (ii) authorize the use of telemedicine by interactive audio, without the need for video, provided certain conditions are satisfied (§7503.A, §7505.B); (iii) delete the requirement for at least one in-person visit by a physician who prescribes controlled substances by telemedicine for patients being treated in a healthcare facility required to be licensed by this state, which possesses a current registration with the U.S. Drug Enforcement Administration (§7513.C.3.a); (iv) provide that a physician refer a patient to another physician in this state or arrange for follow-up care within the state if indicated (§7507.B.2.d); and (v) better provide for board access to patient records (§7509.A.5). The amendments also clarify the status of a telemedicine permit (§408.A), and provide for documentation of telemedicine encounters (§7509.A.1).

III. Summary of the Comments and Board Response—As noted above, during the comment period the Board received two (2) written comments expressing support for the proposed amendments.

Comment: One commenter expressed gratitude to the Board “for your thoughtfully developing your telemedicine rules to embrace this modern health care delivery tool . . .”² It also encouraged the Board to adopt, avoid and consider policies that would facilitate a balanced regulatory environment for telemedicine.

Response: The Board noted its appreciation for the views expressed by the commenter. Further formal reply is not required.

Comment: Another commenter expressed appreciation for the Board’s efforts, “We are

²Corr., The ERISA Industry Committee, to the La. St. Bd. Med. Exam., (Nov. 21, 2016).

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pleased to support the new Telemedicine Rules . . .”³

Response: The Board noted its appreciation for the views expressed by the commenter. Further formal reply is not required.

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³Corr., Teladoc, to the La. St. Bd. Med. Exam. (Oct. 21, 2016).

dentist) be currently certified in Advanced Cardiac Life Support (ACLS) to better ensure the patient's safety. ACLS certification is only for adult patients whereas PALS certification is for patients below the age of 13.

The proposed rule changes require dentists to have PALS certification when treating patients below the age of 13 who have been sedated by the doctor or by a third party. This requirement ensures that both the dentist and the third party anesthesia provider can both assist the child patient in the case of an emergency.

Arthur F. Hickham, Jr
Executive Director
1610#074

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Medical Examiners

Physician Licensure and Practice; Telemedicine (LAC 46:XLV.408 and Chapter 75)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (Board) by the Louisiana Medical Practice Act, R.S. 37:1270, the Board intends to amend its Rules governing the use of telemedicine as to patients who are located in this state, LAC 46:XLV.408 and .7501 et seq. The proposed amendments are needed to conform the board's telemedicine rules to Acts 630 and 252 of the 2016 Regular Session of the Louisiana Legislature. Among other items, the proposed changes: remove the requirement that a physician practicing medicine by telemedicine maintain a physical practice location in this state or have an arrangement with physician who does (§408.A, §408.D.3; §7503.A, §7507.A.1.-2); authorize the use of telemedicine by interactive audio, without the need for video, provided certain conditions are satisfied (§7503.A, §7505.B); delete the requirement for at least one in-person visit by a physician who prescribes controlled substances by telemedicine for patients being treated in a healthcare facility required to be licensed by this state, which possesses a current registration with the U.S. Drug Enforcement Administration (§7513.C.3.a); provide that a physician refer a patient to another physician in this state or arrange for follow-up care within the state if indicated (§7507.B.2.d); and better provide for board access to patient records (§7509.A.5). The amendments also clarify the status of a telemedicine permit (§408.A), and provide for documentation of telemedicine encounters (§7509.A.1).

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter H. Restricted Licensure, Permits

§408. Telemedicine Permit Qualifications, Procedure, Issuance, Expiration and Renewal

A. Requirement for Permit/Qualifications. A physician who does not possess a Louisiana medical license shall not

engage in the practice of medicine in this state via telemedicine, as defined in Chapter 75 of these rules, unless he or she holds a telemedicine permit issued by the board. A telemedicine permit is a limited license that provides lawful authority to a physician who does not hold a current, unrestricted Louisiana medical license to practice telemedicine with respect to patients located in this state. To be eligible for a telemedicine permit an applicant shall:

A.1. - C. ...

D. Application. Application for a telemedicine permit shall be made in a format approved by the board and shall include:

1. - 2. ...

3. the primary location(s) from which telemedicine will be utilized by the applicant;

D.4. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009), amended 41:2144 (October 2015), LR

Subpart 3. Practice

Chapter 75. Telemedicine

Subchapter A. General Provisions

§7503. Definitions

A. As used in this Chapter and in §408 of these rules, unless the content clearly states otherwise, the following words and terms shall have the meanings specified.

Medical Practice Act or the Act—R.S. 37:1261-92, as may from time to time be amended.

Physician—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license or a telemedicine permit duly issued by the board.

Telemedicine—the practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data by a physician using interactive telecommunication technology that enables a physician and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither an electronic mail message between a physician and a patient, or a true consultation constitutes *telemedicine* for the purposes of this Part. A physician practicing by telemedicine may utilize interactive audio without the requirement of video if, after access and review of the patient's medical records, the physician determines that he or she is able to meet the same standard of care as if the healthcare services were provided in person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended 41:2145 (October 2015), LR 43:

§7505. Patient Relationship; Standard of Care;

Location of Participants

A. ...

B. Standard of Care. The practice of medicine by telemedicine, including the issuance of any prescription via electronic means shall be held to the same prevailing and usually accepted standards of medical practice as those in

traditional (face-to-face) settings. An online, electronic or written mail message does not satisfy the standards of appropriate care.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended 41:2145 (October 2015) LR 43:

§7507. Prerequisite Conditions; Disclosures

A. The practice of medicine is deemed to occur at the location of the patient. Therefore, no physician shall utilize telemedicine to provide medical services to patients located in this state unless the physician:

1. holds an unrestricted Louisiana medical license; or
2. holds a telemedicine permit as provided in §408 of these rules.

B. A physician utilizing telemedicine with respect to patients located in this state shall have:

1. ...
2. if required by the standard of care applicable to the diagnosis or treatment of the patient's complaints in a traditional (face-to-face) setting, the ability:

a. - c. ...

d. to refer the patient to another physician in this state or arrange for follow-up care within this state as may be indicated for that purpose.

C. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended 41:2145 (October 2015), LR 43:

§7509. Patient Records

A. Patient records shall be:

1. created and maintained for every telemedicine visit according to the same standards of care as in an in-person visit. The record shall clearly reflect and state that the patient encounter occurred by telemedicine;

2. - 3. ...

4. made available to the patient or a physician to whom the patient may be referred within a reasonable period of time; and

5. made available to the board upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended 41:2146 (October 2015), LR 43:

§7513. Prohibitions

A. - B. ...

C. No physician shall utilize telemedicine:

1. - 2. ...

3. to authorize or order the prescription, dispensation or administration of any controlled substance unless;

a. the physician has had at least one in-person visit with the patient within the past year; provided, however, the requirement for an in-person visit shall not apply to a physician who holds an unrestricted license to practice medicine in this state and who practices telemedicine upon any patient being treated at a healthcare facility that is required to be licensed pursuant to the laws of this state and which holds a current registration with the U.S. Drug Enforcement Administration;

C.3.b. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009), amended LR 41:2146 (October 2015), LR 43:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendment to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., November 21, 2016.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on November 28, 2016 at 10:30 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Eric D. Torres
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Physician Licensure
and Practice; Telemedicine**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The estimated implementation costs to the Louisiana State Board of Medical Examiners are approximately \$492 in FY

2017 for the notice and rule publication costs. There are no estimated implementation savings to the state or local government units through promulgation of the proposed rule changes, which are needed to conform the Board's telemedicine rules to Acts 630 and 252 of the 2016 Regular Session of the Louisiana Legislature. Among other items, the proposed rule changes implement the following actions:

(i) Remove the requirement that a physician practicing medicine by telemedicine maintain a physical practice location in this state or have an arrangement with physician who does (408A, 408D.3; 7503A, 7507A.1.-2);

(ii) Authorize the use of telemedicine by interactive audio without the need for video if the physician determines that he or she can satisfy the same standard of care as if the services were provided in person (7503A, 7505B);

(iii) Delete the requirement for at least one in-person visit by a physician who prescribes controlled substances by telemedicine for patients being treated in a healthcare facility required to be licensed by this state, which possesses a current registration with the U.S. Drug Enforcement Administration ("DEA") (7513C.3.a);

(iv) Maintain the need that a physician be capable of referring a patient to another physician or arranging for follow-up care within the state if indicated (7507B.2.d);

(v) Provide for Board to have access to patient records (7509A.5);

(vi) Clarify the status of a telemedicine permit (408A), and provide for documentation of telemedicine encounters (7509A.1).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on the Board's revenue collections or those of any other state or local governmental unit.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed changes are not anticipated to have a material effect on costs, paperwork, or workload of physicians and/or income of licensees or non-governmental groups. The proposed rule changes may affect physicians in the following ways:

(i) Out-of-state physicians who possess a license or apply for a telemedicine permit will no longer need a referral arrangement with a physician who maintains a physical practice location in this state;

(ii) Physicians are authorized to use telemedicine by interactive audio without the need for video if the physician determines that he or she can satisfy the same standard of care as if the services were provided in person;

(iii) Eliminates the requirement for at least one in-person visit by a physician who prescribes controlled substances by telemedicine to a patient being treated in a facility licensed by the state which possesses a current DEA registration.

Because there is no information or data available either as to the number of physicians who utilize telemedicine in their practice, or the extent to which the changes will impact those that do, the Board is not in a position to estimate the impact of the proposed changes. However, the proposed rule changes may provide an economic benefit to the public by enhanced access to medical services via telemedicine and may reduce the costs associated with the delivery of certain medical services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rule changes will

have any impact on competition or employment in either the public or private sector.

Eric D. Torres
Executive Director
1610#071

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Medical Examiners

Physician Practice; Marijuana for Therapeutic Use by Patients Suffering From a Debilitating Medical Condition (LAC 46:XLV Chapter 77)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (Board) by the Louisiana Medical Practice Act, R.S. 37:1270, the Board intends to amend its Rules governing physicians who utilize therapeutic marijuana in the treatment of their patients who are suffering from a debilitating medical condition, LAC 46:XLV Chapter 77. The proposed amendments are needed to conform the Board's rules to Act 96 of the 2016 Regular Session of the Louisiana Legislature. Among other items, the proposed changes: incorporate changes in definitions made to the law e.g., changing a *prescription* to a *recommendation* (§7705) and a *qualified medical condition* to a *debilitating medical condition* (§7701, §7705); expand the conditions for which therapeutic marijuana may be recommended from three to ten (§7705); provide for instances where the United States Food and Drug Administration may subsequently approve therapeutic marijuana for a debilitating medical condition in the same or a different form (§7709A.2); consistent with the law, provide that physicians who recommend therapeutic marijuana must be domiciled in this state (§7711A.3); incorporate certain changes to provisions on medical diagnoses and independent medical judgment consistent with guidance by the Federation of State Medical Boards and update provisions relative to the treatment plan and patient informed consent (§7717); remove the delay in rule implementation so that the rules will be effective upon promulgation (§7725); and update the suggested form for physician recommendation for therapeutic marijuana consistent with the changes to the law (§7729).

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 77. Marijuana for Therapeutic Use by Patients Suffering from a Debilitating Medical Condition

Subchapter A. General Provisions

§7701. Preamble, Warning, and Suggested Consultation

A. Preamble—State Law. Pursuant to Act 261, R.S. 40:1046, of the 2015 Session of the Louisiana Legislature, as amended and supplemented by Act 96 of the 2016 Session of